

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHEF ALESSANDRO PIROZZI, INC.
and PIROZZI ENTERPRISES, LLC,

No. 2:22-cv-00902-DG-AYS

Plaintiffs,

-against-

CARDCONNECT, LLC
and FISERV, INC.,

Defendants.

**PLAINTIFFS' LIMITED OPPOSITION TO
DEFENDANTS' MOTION TO ADJOURN INITIAL CONFERENCE**

Plaintiffs Chef Alessandro Pirozzi, Inc. ("Pirozzi, Inc.") and Pirozzi Enterprises, LLC ("Pirozzi Enterprises") submit a Limited Opposition to the Motion to Adjourn the Initial Conference filed by Defendants CardConnect, LLC ("CardConnect") and Fiserv, Inc. ("Fiserv").

1. This action concerns the misappropriation of over \$400,000 of credit card payments belonging to plaintiffs. Defendants provided credit card processing services at plaintiffs' restaurants. Defendants contend that a third-party fraudster – whose identity is currently unknown to the parties – impersonated plaintiffs' owner to defendants' agents and requested defendants to transfer plaintiffs' funds to the fraudster's accounts.

2. Defendants seek to adjourn the Initial Conference currently scheduled for April 29, 2022 to an indefinite future date following the decision from Judge Gujarati on their yet-to-be-filed motion to dismiss. (ECF No. 25.)

3. Plaintiffs consent to adjourn the Initial Conference, but rather than postpone the Initial Conference indefinitely, plaintiffs seek to hold the Initial Conference on a date following

the filing of defendants' pre-motion letter requesting permission to file their motion to dismiss. A conference at this juncture would promote the efficient management of this case.

4. Specifically, plaintiffs propose that the parties implement the recommendation of the Sedona Conference that discovery issues be addressed by the parties once defendants informally identify their defenses, which will be done as part of defendants' pre-motion letter. *See The Sedona Conference, Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests*, 19 Sedona Conf. J. 447, at III.A.1 (2018) ("An impediment to a meaningful conference concerning discovery can be the lack of a formal answer to the complaint by the defendant during the pendency of a motion to dismiss.... If discovery responses need to be addressed notwithstanding, practical solutions include the defendant informally identifying its defenses so the parties can discuss the scope of relevant discovery....").

5. Consistent with the recommendation of the Sedona Conference, it would be beneficial for the parties to discuss discovery – including preservation, scope, an ESI protocol, and a limited initial phase of discovery – after defendants identify their defenses in their pre-motion letter.

6. Finally, there is a critical need for discovery to proceed in this matter. This action was originally filed in a state court in November 2021. Given defendants' contention that plaintiffs' funds were misappropriated by an unknown third-party fraudster who impersonated plaintiffs' owner to request plaintiffs' funds be diverted to the fraudster's account, early, limited discovery would equip plaintiffs to identify this alleged fraudster so that plaintiffs may take appropriate action against him or her. Plaintiffs suffer the prospect of irreparable harm if discovery cannot progress, as that would equip the fraudster to irreparably dissipate the stolen funds or transfer them outside the jurisdiction of this Court.

7. Thus, plaintiffs propose the following dates for the Initial Conference: May 6, May 9, and May 10, 2022.

WHEREFORE, plaintiffs respectfully request that this Court deny defendants' request to adjourn the Initial Conference until Judge Gajarati has ruled on defendants' motion to dismiss and grant plaintiffs' request to adjourn the Initial Conference to one of the dates provided by plaintiffs, or another date convenient for the Court.

Dated: April 25, 2022

Respectfully submitted,

BARCLAY DAMON LLP

By: /s/ Charles J. Nerko

Charles J. Nerko

Benjamin Wilkinson (*pro hac vice* to be filed)

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